

**** IMPORTANT NOTICE ****

How and when a licensed salesperson can use dealer tags is a function of their employment status with your dealership.

If a salesperson files their own taxes using an IRS form "1099", they may be considered an "independent contractor" rather than an employee. If the salesperson is an independent contractor, they can only use dealer tags under very limited situations and only if a "PERMISSION TO USE DEALER'S LICENSE PLATES" form (DSD-27) is issued. In fact, for the purposes of determining the number of dealer tags you are entitled to be issued, independent contractors should not be considered. Only "employees" can be considered or counted when determining how many dealer plates can be issued to a dealer. Individuals who file a "1099" are not your employees and therefore may not be issued dealer tags.

Violation of this law could result in the loss of your privilege to be issued dealer tags and even the revocation of your dealer license.

Sales staff who work for your dealership at least 25 hours per week on a regular basis and for which you withhold payroll taxes and issue an IRS form "W-2", are considered "employees" and are therefore entitled to use and drive on dealer tags.

EMPLOYEE OR INDEPENDENT CONTRACTOR? IRS Publication 1779 (Rev. 12/99)

Which are you? For federal tax purposes, this is an important distinction. Worker classification affects how you pay your federal income tax, social security and Medicare taxes, and how you file your tax return. Classification affects your eligibility for employer and social security and Medicare benefits and your tax responsibilities. If you aren't sure of your work status, you should find out now.

The courts have considered many facts in deciding whether a worker is an **independent contractor** or an **employee**. These relevant facts fall into three main categories: behavioral control; financial control; and relationship of the parties. In each case, it is very important to consider all the facts – no single fact provides the answer. Carefully review the following definitions.

Behavioral Control. These facts show whether there is a right to direct or control how the worker does the work. A worker is an employee when the business has the right to direct and control the worker. The business does not have to actually direct or control the way the work is done – as long as the employer has the right to direct and control the work. For example:

- **Instructions** – if you receive extensive instructions on how work is to be done, this suggests that you are an **employee**. Instructions can cover a wide range of topics, for example:
 - * how, when, or where to do the work
 - * what tools or equipment to use
 - * what assistants to hire to help with the work
 - * where to purchase supplies and services

If you receive less extensive instructions about what should be done, but not how it should be done, you may be an **independent contractor**. For instance, instructions about time and place may be less important than directions on how the work is performed.

- **Training** – if the business provides you with training about required procedures and methods, this indicates that the business wants the work done in a certain way, and this suggests that you may be an **employee**.

Financial Control. These facts show whether there is a right to direct or control the business part of the work. For example:

- **Expenses** – if you are not reimbursed for some or all business expenses, then you may be an **independent contractor**, especially if your unreimbursed business expenses are high.
- **Opportunity for Profit or Loss** – if you can realize a profit or incur a loss, this suggests that you are in business for yourself and that you may be an **independent contractor**.

Relationship of the Parties. These are facts that illustrate how the business and the worker perceive their relationship. For example:

- **Employee Benefits** – if you receive benefits, such as insurance, pension, or paid leave, this is an indication that you may be an **employee**. If you do not receive benefits, however, you could be either an **employee** or an **independent contractor**.
- **Written Contracts** – a written contract may show what both you and the business intend. This may be very significant if it is difficult, if not impossible, to determine status based on other facts.

When You Are An Employee. Your employer must withhold income tax and your portion of social security and Medicare taxes. Also, your employer is responsible for paying social security, Medicare, and unemployment (FUTA) taxes on your wages. Your employer must give you a Form W-2, Wage and Tax Statement, showing the amount of taxes withheld from your pay.

You may deduct unreimbursed employee business expenses on Schedule A of your income tax return, but only if you itemize deductions and they total more than two percent of your adjusted gross income.

When You Are An *Independent Contractor*. The business may be required to give you Form 1099-MISC, Miscellaneous Income, to report what it has paid to you.

You are responsible for paying your own income tax and self-employment tax (Self-Employment Contributions Act-SECA). The business does not withhold taxes from your pay.

You may need to make estimated tax payments during the year to cover your tax liabilities. You may deduct business expenses on Schedule C of your income tax return.

If you are still unsure whether a salesperson is an employee or an independent contractor, the IRS can help you make that determination. Contact the IRS toll free at 1-877-233-6767 to request the form SS-8, Determination of Employee Work Status for Purpose of Federal Employee Taxes and Income Tax Withholding. IRS Publication 15-A, Employer's Supplemental Tax Guide, provides additional information on independent contractor sales. IRS forms and publications can also be downloaded and printed from the IRS web site (www.irs.gov).